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IN THE

Supreme Court of the United States

October Term, 1957

No. 488 Misc.

J. IRIZARRY Y PUENTE,
PETITIONER,

v.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE AND ERWIN N. GRISWOLD,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court is reported at 149 F. Supp. 33 and appears at pp. 27-30 of the Record Appendix to the Brief for the Appellant in Court of Appeals. The opinion of the Court of Appeals is reported at 248 F. 2d 799 and appears at pp. 30-35 of the Petition.

QUESTIONS PRESENTED

Did the Court of Appeals err in affirming the District Court's summary judgment dismissing this action to recover for alleged misappropriation of the idea for a foreign tax service, when it appeared on uncontroverted facts that

(a) the idea was common knowledge;

(b) petitioner had previously made a full and unconditional disclosure of the idea to a large number of persons; and

(c) there was no fiduciary or contractual relationship between petitioner and respondent Griswold?

STATEMENT

Proceeding Below. The action in this case was commenced by the petitioner J. Irizarry y Puente in January 1956 against President and Fellows of Harvard College and Erwin N. Griswold, Dean of the Harvard Law School. The complaint alleged in essence that a series of reports on foreign tax systems which Harvard Law School is preparing in cooperation with the United Nations makes use of an idea owned exclusively by the petitioner and that the respondents stole the idea from the petitioner. The complaint sought $3,000,000 in damages, an accounting for profits and injunctive relief.

The respondents moved for summary judgment on five grounds (Resp. R. A. pp. 37-38).* The District Court granted this motion on one of these grounds—that the idea of a foreign tax service which petitioner disclosed to Griswold was not novel, and that petitioner therefore had no rights in the idea. The Court of Appeals for the First Circuit unanimously affirmed this

* "Resp. R. A." references are to the Record Appendix to Brief for Appellees in the Court of Appeals, nine copies of which have been filed in this Court by the respondents.

judgment on the same ground and noted that two of the other grounds set forth in respondents' motion for summary judgment also supported the District Court's judgment. These additional grounds were (1) the unconditional and public disclosure by the petitioner of his plan before communicating with Griswold and (2) the lack of any contractual or fiduciary relationship between Griswold and the petitioner.

The Uncontroverted Facts. The facts upon which both courts below reached their decisions were not in dispute. On the basis of the complaint and uncontroverted statements in depositions and affidavits these facts are as follows:

The only communication which has ever taken place between the petitioner and Griswold consists of correspondence between May and August of 1950. The entire correspondence, as identified by petitioner in his deposition, appears in Resp. R. A. pp. 13-30. The first letter was from the petitioner to Griswold. It stated that the petitioner had been working on a loose-leaf tax service for certain countries of Latin America "along the lines of the Tax Services published in this country on federal and state taxes by Prentice-Hall or Commerce Clearing House," and described the plan for his proposed tax service. The letter went on to request Griswold's cooperation in looking over the text which he had prepared on Argentine tax law.

As the Court of Appeals noted in its opinion (Petition, p. 35), all Griswold ever asked petitioner in his letters was for information as to the part petitioner wished him to take and the proposed financial arrangements. He never obtained this information, and after petitioner had failed to keep two appointments Griswold terminated the correspondence.

In his first letter to Griswold petitioner stated that "a substantial survey has been conducted among 1500 important business and banking institutions and leading law firms throughout the country in order to deter-

mine the measure of interest in such Service. . . ." (Resp. R. A. p. 14). On deposition petitioner described this survey which consisted of mailing material describing his plan to 1500 institutions almost a year before he first wrote to Griswold. (Resp. R. A. pp. 65-69 and 31-36). He also referred in deposition to other prior disclosures of his plan.

The petitioner's *Argentine Federal Tax Law Service*, the service referred to in his letters to Griswold, was published and copyrighted in 1951. It is a large, loose-leaf service with text and annotations of the statutes and regulations and analytical material. Its price is $300, and the price for supplemental material after the first year is $150.

The Harvard Law School, in cooperation with the United Nations, is engaged in the preparation and publication of a series of reports on the tax laws and tax administrative procedure of approximately thirty foreign countries. This joint project was suggested to Harvard by a representative of the United Nations as a continuation of work already done by the United Nations in the foreign tax field extending back to 1947.

The reports which the Harvard Law School is publishing are short, hard-bound books summarizing each country's tax system. The first three reports (United Kingdom, Brazil and Mexico) were published during 1957 and are sold at prices of $15, $10 and $12.50, respectively. In the words of the District Court, the Harvard reports are "completely different in size, form, price and content from the plaintiff's *Argentine Federal Tax Law Service*." 149 F. Supp., at 34

Respondents introduced three uncontroverted affidavits describing the many loose-leaf services on United States and foreign taxes (Resp. R. A. pp. 50-58). In addition, an affidavit of a representative of the United Nations described the work of that organization in preparing and distributing foreign tax materials. (Resp. R. A. pp. 40-44)

ARGUMENT

Petitioner's objections to the judgment below are without merit. And since the law concerning common-law protection of ideas is a matter of state law, these objections present no federal question warranting review by this Court.

In the law relating to protection of ideas, it is clear that there are three legal prerequisites to recovery for alleged misappropriation. As the Court of Appeals found, the uncontroverted facts show that none of these has been met here. The first of these prerequisites is that the idea not already have become common knowledge. In asserting that his old idea should be protected, the petitioner fails, as both courts below noted, to distinguish between copyright and idea cases. The petitioner could, of course, recover from one who *copied the text* of his tax service, even though his idea was old. But the present case is not a copyright case. Petitioner does not claim his book was copied; he says his idea for the book was stolen. And it is perfectly clear that one who "owns" an old, well-known idea owns nothing the law will protect. *Masline* v. *New York, N.H. & H. R. Co.*, 95 Conn. 702, 112 Atl. 639 (1921); *Lueddecke* v. *Chevrolet Motor Co.*, 70 F.2d 345 (8th Cir. 1934).

The second prerequisite of protection is that the alleged owner of the idea must have kept it a secret himself. *Gallowhur Chem. Corp.* v. *Schwerdle*, 37 N.J.S. 385, 117 A.2d 416 (1955); *Affiliated Enterprises* v. *Gruber*, 86 F.2d 958, 961 (1st Cir. 1936): ". . . any property right based upon secrecy was lost as early, at least, as the first public exhibition." It would be strange indeed if after a full and unrestricted disclosure of his plan to as broad a list of people interested in foreign taxes as he could put together, petitioner could by an unsolicited letter referring to that very fact bind Griswold to treat the well-known idea as petitioner's own private secret.

The third prerequisite is that there be a fiduciary or contractual relationship between the parties, *Chadwick* v. *Covell*, 151 Mass. 190, 191, 23 N.E. 1068 (1890). As the Court of Appeals pointed out in its opinion (248 F. 2d, at 802), the petitioner's first letter to Griswold, which was wholly unsolicited, disclosed and described petitioner's entire idea; all Griswold ever sought to find out was what the petitioner wished him to do and what the financial arrangements were to be. The Petition seems to argue (pp. 7-9) that the District Court erred in finding that there was no contractual relationship, rather than using the exact words of the complaint and finding no confidential relationship. However, since these are but two ways of stating the rule that the relationship between the parties must show an obligation undertaken to the plaintiff, the District Court was merely expressing the rule in its own words.

On each of these points every relevant fact was before the courts below and none was in dispute. The petitioner's tax service, the prototype of the Harvard reports and uncontroverted affidavits describing similar tax services and materials were before the courts. These — or indeed judicial notice that petitioner's idea was an old one — were all that was needed on the question of novelty. Similarly, the broad prior disclosures and the correspondence between petitioner and Griswold and the surrounding circumstances were introduced in detail by petitioner in his deposition, and thus there was no factual question on the other two grounds upon which the Court of Appeals ruled that the motion for summary judgment should stand.

Thus even if there were some basis to petitioner's claim that there are facts in dispute on the question of misappropriation (which there is not), the judgment below would not be affected. For the three legal grounds on which that judgment is based required dismissal whether or not the alleged misappropriation had taken place.

The petition raised various procedural objections, all of which are groundless. Point II of the Petition is

without merit, since both courts below plainly determined that there was no genuine issue of material fact. Point III fails to recognize that the provisions relating to how issues will be determined on trial are inapplicable where, as in this case, there is no triable issue. And contrary to the claim of Point VIII, the Court of Appeals was correct in denying petitioner's notice to strike or limit respondents' brief and was entitled to exercise the discretion its own rules gave it to deny petitioner's request to file an additional brief after argument.

Summary judgment is most appropriate in this case. For that procedure was designed to avoid the delay and expense of trial where there is no factual issue — and particularly where, as here, the legal claims are frivolous.

CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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